The Calhoun Revolution: Its Basis and its Progress.

SPEECH

OF

HON. J. R. DOOLITTLE,

OF WISCONSIN.

Delivered in the United States Senate, December 14, 1859.

Mr. DOOLITTLE. Mr. President, I desire, also, to submit a few observations upon one portion of the President's message referred to by the honorable Senator [Mr. BROWN] who has just preceded me. I read from the message:

"I cordially congratulate you upon the final settlement, by the Supreme Court of the United States, of the question of slavery in the Territories, which had presented an aspect so truly formidable at the commencement of my Administration. The right has been established of every citizen to take his property of any kind, including slaves, into the common Territories belonging equally to all the States of the Confederacy, and to have it protected there under the Federal Constitution. Neither Congress, nor a Territorial Legislature, nor any human power, has any authority to annul or impair this vested right."

And again, I read upon the same page:

"Thus has the status of a Territory, during the intermediate period from its first settlement until it shall become a State, been irrevocably fixed by the final decision of the Supreme Court."

In the first place, sir, what strikes me with great force is the radical change in the opinions of Mr. Buchanan within the last twelve years. Twelve years ago, he stated deliberately to the American people that "the inference, in his opinion, was irresistible, that Congress had the power to legislate upon the subject of slavery in the Territories." To-day, as President, he declares that

"The right has been established of every citizen to take his property of any kind, including slaves, into the common Territories belonging equally to all the States of the Confederacy, and to have it protected there under the Federal Constitution;" and that "neither Congress, nor a Territorial Legislature, nor any human power, has any authority to annul or impair this vested right."

Sir, is it not most remarkable that a man of his ability and experience, after having, at the ripened age of fifty years and upwards, declared that the question is so free from all doubt that, in his opinion, the inference is irresistible that Congress has the power to legislate upon the subject of slavery in the Territories, should, for some reason, now, in the later years of his life, after he has passed the period of threescore, so completely change his opinions on this question as to maintain and declare that "neither Congress, nor a Territorial Legislature, nor any human power," has the right to resist the introduction of slavery into the Territories of the United States, or "to annul or impair that vested right?" What an extraordinary change must have come over the opinion of this man within the last few years!

But, sir, the change in his opinion is no greater than the change which has come over the opinions of hundreds and thousands in the Southern States. In 1846, the opinion found few advocates among the men of the South, that Congress had not the constitutional power to legislate upon the subject of slavery in the Territories, and fewer still that slavery is carried into and protected in them under the Federal Constitution. There were none at the North. It is a new thought; it is an afterthought. It is not an original conclusion to which men's minds have come, but it is a part of a systematic attempt to revolutionize public opinion, to promote what the slave power deems to be its pecuniary and political interests. The leading men of the South, having taken these new grounds, have dictated to the party in power, during the last and present Administrations, a change in its opinions and its policy.

A distinguished gentleman, the Vice President of the United States, for whom I entertain the highest respect, in a late speech delivered in Kentucky, used the following language, speaking of the different state of circumstances under which the men of the South now find themselves, compared with what it was ten years ago:

"We have the Executive; we have the laws; we have the decisions of the courts; and that is a great advance from where we stood ten years ago."

In February, 1847, Mr. Calhoun introduced in the Senate a resolution declaring, for the first time, this doctrine, that the Constitution, of its own force, guaranties the right to take slaves into the Territories of the United States; and, at the same time, another resolution denying the power of Congress to inhibit it. Up to that time, very few, among the prominent men at the South, assented to that doctrine. Under his lead, however, they have changed their ground, and have changed the ground of the Democratic party, using its organization to force on a revolution in opinion on this question; and to a very great extent, I confess, they have already succeeded with those who still act with that party.

I do not deny that they voted against the Congressional prohibition sought to be applied in 1846; but what I say is this, that there were very few of them who took the ground at that day that the Congress of the United States, under the Constitution, had not the power to make the prohibition, if they sought to apply it. Sir, the whole history of this Government, from the beginning down to 1847, was a history of prohibition or limitation of slavery on the part of Congress; and there never was an act organizing any Territory under the authority of the United States, which did not in the act itself recognise the power of Congress to legislate upon the subject of slavery previous to 1847; but I shall have occasion to refer to them more in detail hereafter.

I desire for a single moment now to inquire into, and, if possible, probe this thing to the bottom, and see what has brought about this revolution of sentiment upon this question. The truth is, that the South have changed their ground on the whole subject of slavery—slavery in the abstract, and slavery in its relations to the legislative and judicial powers of this Government. We of the Republican party stand where our fathers stood, where your fathers stood, and where you yourselves stood but a very few years ago, on this question of slavery. You then, and your fathers always, admitted slavery to be an evil, to be tolerated as a necessity until you could see your way to get rid of it; but you did not take the ground that slavery was a blessing, and in accordance with natural right.

You have not, until recently, assumed the doctrine that the natural and normal condition of the laboring man is that of a slave. It is within the last few years that this doctrine has been promulgated at the South, and I grant that there, it has made and is making most rapid strides. It reaches your schools, and it reaches your churches, and it reaches your public journals.

Mr. CHESNUT. With the permission of the Senator from Wisconsin, I deny that the position at the South is that the normal condition of the laboring man is that of slavery. The position is, that the normal condition of the African among us is that of slavery, and the proper condition. It is the true and only beneficial relation. That is the ground we assume as the position, not of the white laborer, but of the African laborer, in this country.

Mr. DOOLITTLE. I understand, Mr. President, that some of the leading men and journals of the South, in defending slavery, do not undertake to justify it upon the ground of negro slavery alone. The Review of Mr. De Bow, the Richmond *Enquirer*, the Charleston *Mercury*, the Richmond *Examiner*, and the book published by Mr. Fitzhugh, which was commended very generally by the leading Democratic press to the people of the South, take the ground and justify slavery, not because slaves are negroes—the descendants of Ham—but put it upon the broader ground, and, as they allege, the only defensible ground upon which slavery can rest, that the natural and normal condition of the laboring man is that of a slave; and that the true ground on which to reconcile this conflict between capital and labor is, that capital should own its labor, and not hire it.

[Mr. DOOLITTLE was here interrupted by Mr. CLAY, of Alabama, and also by Mr. BROWN, of Mississippi, who made some remarks, which are omitted, substantially concurring with Mr. CHESNUT. See Appendix, Note A.]

Mr. DOOLITTLE. Mr. President, I shall, perhaps, from what has now occurred, do what I did not intend in the outset, refer to some Southern authorities bearing on this question. I do not say that all the leading men and presses of the South to-day take the ground that the laboring man is a slave, whether white or black, but I do maintain that some of their leading presses and some of their leading men do take that position, and do justify slavery, upon the ground that the true way to reconcile this troublesome question of capital and labor is simply this: that capital should own its labor, and not hire it. The honorable Senator from South Carolina, [Mr. HAMMOND,] the colleague of the gentleman who first interrupted me, in his famous speech, delivered here, denominated the "mud-sill speech"—I speak of it with no disrespect to him, but merely to designate the speech in which that term was used—substantially took the ground that the laboring white men of the North were slaves in fact, though not in name, as much so as the negroes of the South who are actually held in the condition of slavery. That is one authority.

[Here Mr. CHESNUT made some more extended remarks. Mr. D. resumed.]

I do not deny that men at the South differ in their opinions, some, perhaps the majority, as yet, maintaining that the doctrine that the natural and normal condition of the laboring man is that of a slave, applies to the negro race, and to the negro race alone; but, at the same time, I maintain that leading men and presses at the South undertake to justify slavery, not upon the ground *of negro slavery* as an exceptional institution, but upon the broader and higher ground that slavery, in the abstract, is right and natural, and "the most safe and stable basis for free institutions in the world."

Mr. PUGH. I hope the Senator will permit

me to interrupt him. I want to make a suggestion.

Mr. DOOLITTLE. If the gentleman is from the South, at this stage of the discussion I will give way.

Mr. PUGH. No, sir; I wish to say something to you as a Northern man, if the Senator will permit me.

Mr. DOOLITTLE. I desired to address myself to the Senate; and when I was speaking upon a subject which concerned particularly Southern States, and was addressing myself to Southern men, I consented to be interrupted by them. If, however, my friend from Ohio desires to say anything special, I have no objection to hear him.

Mr. PUGH. I was about to suggest to the Senator, that the shortest way to settle the fact was to name some man or some newspaper, because I have heard just such suggestions as that made a thousand times to the people of the non-slaveholding States, and I believe it has done more to produce this ill blood than any other course of assertion. Now, the Senator is contradicted; let him give the authority, and it can be easily settled one way or the other.

Mr. DOOLITTLE. Well, I name the Richmond *Examiner*, which said:

"Our object in these preliminary remarks is to show how unwise it is for the South to attempt to justify negro slavery as an exceptional institution. It is the only form of slavery which has excited the prejudices of mankind, and given rise to abolition; the only kind of slavery which has not been, until recently, universal. The experience, the practices, and the history of mankind, amply vindicate slavery, in the abstract, as a natural, universal, and conservative institution. In justifying slavery in the general or abstract, we have to contend with the prejudices growing out of the African slave trade, out of the cruel treatment of slaves wherever that trade exists, and the still greater prejudices of race and color. Still, it is shown by history, both sacred and profane, that domestic slavery is a natural, normal, and, till lately, universal institution."

The Richmond *Enquirer* I will name for another——

Mr. CLAY. Will the Senator pardon me for a moment? I did not hear the words, "white slavery," in the extract which he has read, and I want to know now, after reading that extract merely, severed from the context, by what authority he maintains that the Richmond *Examiner* holds to the doctrine that slavery is the normal condition of the laboring classes of all races? I say that the very extract he has read fails to sustain his allegation, and I venture to assert that, if he will produce the whole article, it will disprove it clearly.

[Mr. CLAY here made some further remarks, mainly personal to himself.]

Mr. DOOLITTLE. As to the meaning of the paragraph I have read, that is a question of construction between the honorable Senator and myself.

Mr. CLAY. I ask for the word "white" there.

Mr. DOOLITTLE. It seems to me perfectly clear that the construction I give is correct. It claims that slavery cannot be defended as an institution based on negro slavery alone. The Richmond *Enquirer* took the same ground, when it said:

"Until recently, the defence of slavery has labored under great difficulties, because its apologists—for they were merely apologists—took half-way ground. They confined the defence of slavery to mere negro slavery, thereby giving up the slavery principle, admitting other forms of slavery to be wrong, and yielding up the authority of the Bible, and of the history, practices, and experience of mankind. Human experience, showing the universal success of slave society, and the universal failure of free society, was unavailing to them, because they were precluded from employing it by admitting Slavery in the abstract to be wrong. The defence of mere negro slavery involved them in still greater difficulty.

"The line of defence, however, is now changed. The South"—

The editor undertakes to speak for the South—

"The South now maintains that slavery is right, natural, and necessary. It shows that all Divine and almost all human authority justifies it. The South further charges that the little experiment of free society in Western Europe has been from the beginning a cruel failure, and that symptoms of failure are abundant in our North. While it is far more obvious that negroes be slaves than whites—for they are only fit to labor, not to direct—yet the principle of Slavery is in itsel right, and does not depend on difference of complexion."

Mr. Johnson a distinguished gentleman from Georgia, in a speech delivered in the city of Philadelphia in 1856, said, substantially, that the ground on which the South now stands is, that capital should own and not hire its labor.

But, Mr. President, it is not material to my present purpose to inquire how many or how few of the men of the South now maintain these views. Most certainly, I shall not stand here to question for one moment the sincerity of those gentlemen who disclaim such extreme opinions, and maintain, as they now do, that slavery should be confined to the negro race alone. I take them at their word, and accept precisely what they now say. Their position is, that slavery is a blessing, an institution approved of God, and to be maintained by man. That I understand to be the ground upon which the gentlemen now stand. Well, sir, that is substantially all that I intended to say in the beginning, when I was interrupted, in order to show that the South have changed their ground on this question of slavery—negro slavery, if you please. How long is it since the leading men of the South, and in all the States of the South, their judges upon the benches of their Supreme Courts, their statesmen in Congress and out of Congress, took the ground which the Richmond *Enquirer* stated was taken by the South, that slavery was an evil to be apologized for, to be borne as a necessity, rather than bear something worse? How long is it since they have taken the ground that slavery is a positive good; a divine institution, on which you may ask the blessing of the church and the blessing of Heaven? It has all come up within the last few years, under the lead of Mr. Calhoun; there is no disputing this fact.

Sir, but the other day, in this very Senate, the Senator from Virginia, [Mr. HUNTER,] in speaking of the course which had been pursued by Mr. Letcher, the lately-elected Governor of Virginia, in relation to some speech or doctrines that had been promulgated in Western Virginia, stood up here and stated the fact frankly, in substance—I speak from memory—that we in Virginia have changed our ground; we do not stand where we stood anciently; we do not stand where our fathers stood upon this slavery question; as much

as to say, we do not believe in what Washington believed, and Jefferson believed, and Madison believed, and Monroe believed, and all the leading men of Virginia, for the first fifty years of our existence under the Constitution, believed; we have changed our opinion in Virginia, and instead of now admitting that slavery is an evil, to be restricted and discouraged, and which we may hope and pray may be some day entirely removed from the Republic, we now take the ground that it is a blessing, to be fostered, encouraged, and extended, as a benefit to the black man and a benefit to the white. Mr. President, I do not find fault with gentlemen when they change their opinions——

Mr. MASON. Will the Senator allow me to interrupt him?

Mr. DOOLITTLE. Certainly.

Mr. MASON. The Senator, I presume, in referring to a Senator from Virginia, referred to my colleague.

Mr. DOOLITTLE. I did.

Mr. MASON. I have not a very distinct recollection of what opinions he advanced on the occasion to which the Senator alludes. I presume he alludes to a debate during the present session.

Mr. DOOLITTLE. Yes, sir.

Mr. MASON. I think, however, that he has been quoted by the honorable Senator, substantially, correctly. Certainly, I believe that because of the aggressions committed by the servile States, commonly called the free States, upon the condition of African bondage in the South, the mind of the South has been more turned toward it, and by reason of that further consideration, more deliberation, pondering more deeply upon the relations subsisting between the African race in this country and the white race, the opinion once entertained, certainly in my own State, by able and distinguished men and patriots, that the condition of African slavery was one more to be deplored than to be fostered, has undergone a change, and that the uniform—I might almost say universal—sentiment in my own State upon the subject of African bondage is, that it is a blessing to both races, one to be encouraged, cherished, and fostered; and to that extent the opinion of Virginia is different from the opinion entertained by those distinguished men who have now gone, but who, we believe, best knowing their sentiments, if they lived in this day would concur with us. That is the present opinion. I was not present when this debate arose, and I am at some loss to know how this question of the merits or demerits of the condition of African bondage has arisen in the Senate of the United States, for it is a question I should think purely abstract, and with which we have nothing to do. [See Note B.]

Mr. DOOLITTLE. Mr. President, the honorable Senator who has just taken his seat was not present when the debate arose. This discussion has grown up and become, in its nature, somewhat conversational, in consequence of my having been interrupted several times, having made in the outset a general remark on this subject of slavery, that the men of the South had latterly taken different ground from that heretofore occupied by them, and the honorable Senator from Virginia now confirms the statement which I made, for which I am much obliged to the honorable Senator. I take it that it must be conceded that the same opinions are not to-day entertained on the subject of slavery, as an abstract question, among the leading men of the South, which were entertained for the first fifty years of the existence of this Government under the Constitution of the United States. This revolution is fundamental, and if we go to the very bottom of it, we shall find that it is based upon the idea recently adopted, as the honorable gentleman from Virginia has now stated, that negro slavery is right, a blessing to both races, black and white. The churches of the South, the schools of the South, the public press of the South, the Legislatures of the South, and the statesmen of the South, to-day maintain that doctrine. From this comparatively new idea have proceeded all those struggles which have agitated the country for the last ten years. Claiming to be a positive good, slavery becomes, of necessity, aggressive. It demands—

First, that the power of Congress to restrict or limit its expansion shall be given up;

Secondly, that the people of a Territory shall have no power to limit or exclude it; and

Thirdly, that by a decree of the Supreme Court, which the President declares to be irrevocable, the Constitution, of its own force, guaranties the right to take and hold slaves, under its protection, in all the Territories we now have, or may hereafter ever acquire.

I do not complain of gentlemen who may change their opinions. It is any man's right—more, sir, duty—to change his opinion when convinced of error; but what I complain of is this: that when you have changed your opinions, you insist that we shall also change our opinions, and take the same new grounds which you now take; and say, that if we of the free States, whom you sometimes call the majority in this Confederacy, shall still maintain the same opinions which our fathers maintained, and your fathers maintained, and upon which you have but recently changed your own views, and shall honestly exercise our political rights, and elect a President of the United States, as we legally may, who concurs with us in our opinion that slavery is an evil, and ought not to be extended into the Territories, you propose, some of you propose, to break up the Government. I do not refer, of course, to the honorable Senator from Virginia on my left; but there are those here and other men standing in high places who declare before the world, that unless we do acquiesce in this change of opinion upon this question, politically and judicially, unless we acquiesce in this doctrine, and take the ground which Mr. Buchanan has taken in his message, this Government is to be broken in pieces, and the Constitution overthrown. If we, being in a majority, still hold to the opinions of those who made the Constitution, you will destroy the Constitution. If we, being in a majority, shall still cherish the opinions of those who formed the Union, you will dissolve the Union. Now, sir, we have a right to complain

of that. You are to convince us by argument, and if you can do so, it is well enough. We have no objection to any argument addressed to our understanding, to convince us of our error; but when that argument is to be accompanied by a threat that the Government itself is to be destroyed unless we accede to this new opinion which you yourselves have recently formed, we have a right to complain. I repeat, sir, and we do complain.

Mr. President, so much has been said in relation to the decision of the Supreme Court of the United States in the Dred Scott case, that I desire to submit a few words on that subject also. I do not deny the power of that court, in any case of which it has jurisdiction, to make a final decision in that particular case; but if, in the course of that adjudication, the judges of the court give expression to an opinion bearing upon a political question, I deny that that opinion has any binding force whatever upon us, as members of the Senate, or upon the President of the United States, acting in his capacity as President, either to approve or disapprove the legislation of Congress. This Supreme Court have power to decide a case over which they have jurisdiction, because there is no other tribunal to which an appeal can be made; and, in a case of that kind, their decision is final and binding upon the parties to the suit. Their rights, under the decision, become vested; but that any opinion which they may express, in the course of that adjudication, is or ought to control the political or the legislative action of the members of this body, or the political action of the people of the United States, I deny altogether, as the most dangerous of all doctrines ever promulged on the floor of the Senate or elsewhere. Grant to this Supreme Court, composed of judges irresponsible to the people, and appointed for life, this power of construction over the Constitution, and, though the men upon that bench were angels instead of men, there would be established in this Government an oligarchy as despotic as it would be irresponsible. It was John Randolph, I think, who made that most significant remark, "the Book of Judges comes before the Book of Kings."

The business of a court is not to make or unmake laws or Constitutions. Their business is simply to decide the rights of parties. In arriving at that decision, they may and must pass on the law itself before they can apply it; but they pass upon the question of law merely as the means of arriving at their decision, as incidental to the duty which they have to perform in deciding the rights of the parties. The court may decide right or wrong; and whether they decide right or wrong, if there is no appeal from their decision, the parties in that particular case are bound by the decision, notwithstanding; and the rights acquired under it, whether they are based on a right decision or a wrong decision, become fixed and vested, because there is no appeal to any other human tribunal.

But, Mr. Buchanan says, "the status of a Territory" "has been irrevocably fixed by the final decision of the Supreme Court." Yes, sir, *irrevocably fixed*, that is the word! Sir, suppose this court should change its opinion to-morrow; would that change the Constitution? Suppose that, in any new case coming before it this same question of constitutional power should be again discussed, and the court should do as this court has often done, and as other courts no less able and distinguished have done a thousand times in the history of judicial proceedings, overrule their own former opinion, would that change the Constitution? Not at all, sir; the Constitution would remain the same. I protest against this monstrous doctrine; and especially when it is promulged by the leaders of the Democratic party of the United States. That was not the Democratic doctrine when General Jackson was President, and Chief Justice Taney was his Secretary. That was not the doctrine in relation to the constitutionality of the United States Bank. The Supreme Court once decided that a bank was constitutional. Who believes, if that question was presented to that court to-day, that it would decide that a Bank of the United States was constitutional?

The decision of judges is, after all, but an opinion of men; an opinion which must necessarily be acquiesced in by the parties whose rights are determined; but it is not an opinion to be acquiesced in either by the legal profession, or by political parties, or by the Senate of the United States acting in its official capacity. Such opinions are to be treated respectfully, as the opinions of other respectable men; but when we come to act in our capacity as Senators of the United States, we do not bow down to the opinion which may have been delivered in the Dred Scott case, or in any other case, by the Supreme Court of the United States, or of any State in this Union. We are reduced to a very strange state of things, if the mere dictum or opinion of any court is to be received, to control the action of the Legislative body of the Government, or to control the action of great political parties.

Without discussing the question, which has been often referred to, whether the Supreme Court had or had not jurisdiction over the question of the constitutionality of the Missouri compromise, I desire, for a few moments, to call your attention to the history of the legislation of this Government bearing on that question; and I undertake to show that every Administration of the Government of the United States, beginning with Washington, and coming down to the close of the Administration of James K. Polk, yes sir, that every Administration, upon their official oaths, asserted and exercised the power of Congress to legislate on the subject of slavery in the Territories, and to legislate by way of restriction. To go back to the Administration of Washington, the ordinance of the Confederation of 1787 was re-enacted, under the Constitution, during his Administration, and received his official signature. It was the eighth act, I believe, which ever passed the Congress of the United States, which thus gave constitutional sanction and validity to that great measure against slavery extension. In the Administration of John Adams, Indiana was organized, in which this

same provision was re-enacted. Come down to the Administration of Mr. Jefferson, who was the apostle and leader of the great Republican party of this country. To say nothing of the organic act of the Territory of Michigan approved by him, which re-enacted the ordinance of 1787, excluding slavery forever, I come, at once, to the organization of the Territory of Orleans—a Territory which was acquired by treaty from France, in which the institution of slavery existed under the laws of France. The tenth section of the act organizing that Territory provided that the *foreign slave trade, and also that the domestic slave trade, should not be permitted in that Territory.* Although that provision of the Constitution, which was to take effect in 1808, giving Congress the power to put an end to the slave trade in the existing States, had not yet taken effect, yet in 1804, four years before that time, in the bill organizing the Territory of Orleans, the foreign slave trade was prohibited; so, too, was the domestic slave trade prohibited, and no man was permitted to take a slave into the Territory of Orleans for sale at all, and no slave could be taken into that Territory, except by a *bona fide* owner removing into the Territory for actual settlement. Here, even in the Territory of Orleans, where slavery existed when we acquired it, Congress exercised the power of legislation upon the subject of slavery, and exercised it by way of restriction. I do not say that it exercised all its power; I do not say that Congress did all that it could do to prevent slavery going into that Territory; but Congress did legislate on that subject, and did legislate by way of restriction. It provided that, if any man took a slave into the Territory for sale, or if any man took a slave into the Territory unless he was actually emigrating into the Territory, and took the slave as a part of his settlement with him, the slave should be emancipated—emancipated by act of Congress—and the man who was guilty of a violation of its provisions should pay a fine of $300.

Mr. COLLAMER. Will the gentleman indulge me a moment?

Mr. DOOLITTLE. Certainly.

Mr. COLLAMER. In that same act, in relation to the Territory of Orleans, it was further provided that slaves should not be taken into that Territory, either for sale or in families, if they had been imported into the United States since 1798.

Mr. DOOLITTLE. I am obliged to my honorable friend from Vermont. I accept the correction, and the fact is important. I would read the section of the act, but I do not desire to take up the time which would be necessary to do so.

[Mr. PUGH, in the course of debate, in reply, having given his construction to the act organizing Orleans Territory, Mr. DOOLITTLE said:

Mr. President, that the gentleman and myself may have no misunderstanding about the question of what is provided in the law, I now read the section.

Mr. PUGH. Well; read it, and see if I am not right.

Mr. DOOLITTLE. Here it is. I read from the Orleans act:

"SEC. 10. It shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place without the limits of the United States, or cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing, any slave or slaves. And every person so offending, and being thereof convicted before any court within said Territory, having competent jurisdiction, shall forfeit and pay, for each and every slave so imported or brought, the sum of $300; one moiety for the use of the United States, and the other moiety for the use of the person or persons who shall sue for the same; and every slave so imported or brought shall thereupon become entitled to, and receive, his or her freedom. It shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place within the limits of the United States, or to cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing, any slave or slaves, which shall have been imported since the 1st day of May, 1798, into any port or place within the limits of the United States, or which may hereafter be so imported, from any port or place without the limits of the United States; and every person so offending, and being thereof convicted before any court within said Territory, having competent jurisdiction, shall forfeit and pay, for each and every slave so imported or brought, the sum of $300; one moiety for the use of the United States, and the other moiety for the use of the person or persons who shall sue for the same."

And, now, I will call the Senator's attention to what follows. These are the two cases to which he has referred:

"And no slave or slaves shall directly or indirectly be introduced into said Territory, except by a citizen of the United States removing into said Territory for actual settlement, and being, at the time of such removal, a *bona fide* owner of such slave or slaves; and every slave, imported or brought into the said Territory contrary to the provisions of this act, shall thereupon be entitled to, and receive, his or her freedom."

What I stated in relation to the Orleans Territory was this: that Congress exercised the power, not only to prevent the foreign slave trade, and to prevent, as my friend from Vermont also stated, the bringing into the Territory slaves, from any of the States, either for sale or in families, that had been imported into the United States after 1798, but also to put an end to the entire domestic slave trade; and while I said that Congress did not do all that it had the power to do to prevent slaves going into that Territory, Congress did legislate by way of restriction, not allowing any man to take a slave into the Territory for sale; allowing no man to take a slave into the Territory unless he was *bona fide* removing for settlement, and taking his slaves with him as a part of his settlement; and not even then, unless imported before 1798. That is the substance of what I stated, and the section which I have read bears me out entirely.]

Again, sir, in the cession from North Carolina, it was provided that Congress should make no regulation tending to the emancipation of slaves. Why insert such a provision, if Congress had no such power?

Mr. President, when do we first hear of this celebrated doctrine, which has made so much figure before the American people within the last six or eight years, of Territorial independence, squatter sovereignty, or whatever it may be termed, the absolute right of a Territory, just as soon as it is organized, to legislate for itself upon all matters of internal concern, independent of the control of Congress? During the Administration

of Mr. Jefferson, Mr. St. Clair, then Governor of the Northwestern Territory, first broached this doctrine, that the moment a Territory is once organized, that moment it becomes a State, independent of the action of Congress, with sovereign power to legislate for itself, in an address, in this language:

"For all internal affairs, we have a complete Legislature of our own, and they are no more bound by an act of Congress than by an edict of the First Consul of France."

President Jefferson, through Mr. Madison, as Secretary of State, met this doctrine in this style; he addressed Mr. St. Clair the following note:

"SIR: The President, observing in an address lately delivered by you to the Convention at Chilicothe an intemperance and indecorum of language towards the Legislature of the United States, and a disorganizing spirit and tendency of very evil example, and grossly violating the rules of conduct enjoined by your public station, determines that your commission of Governor of the Northwestern Territory shall cease on the receipt of this notification."

Mr. PUGH. I would ask the Senator where he got that extract from Governor St. Clair's speech. Did he ever read the whole speech?

Mr. DOOLITTLE. No, I have not read the whole speech; but I have read, as I suppose, the substance of it.

Mr. PUGH. It shows that the Senator had better have done it. Governor St. Clair was not speaking of that question at all, but he was endeavoring to persuade the Convention of the people of Ohio, met to form a State Constitution, to trample under foot the enabling act of Congress. It had nothing to do with the Territorial Government. It was a speech delivered in Chilicothe, in 1802.

[Some further colloquy ensued, and Mr. DOOLITTLE resumed. See Note D.]

During Mr. Jefferson's Administration, there occurred another memorable event, bearing upon this subject, never to be forgotten. The Territory of Indiana petitioned Congress to repeal the Slavery restriction. It was refused by Mr. Jefferson's Administration. The petition was referred to a committee, of which John Randolph was chairman, who reported against it, declaring that it was "highly dangerous and inexpedient to impair a provision wisely calculated to promote the growth and prosperity of the Northwest Territory."

If you pass on from the organization of the Territory of Orleans, and come down to the organization of the Territory of Illinois in 1809, and again of Missouri in 1812, in the Administration of Mr. Madison, the same power of Congress was recognised and exercised, though not to the extent of entire exclusion from the last. Pass down to the Administration of Mr. Monroe, when the Missouri compromise was passed. When the question of its constitutionality was before Mr. Monroe, he summoned his Cabinet together, and took their opinions; and they gave their unanimous opinions in favor of the power of Congress to exclude slavery from the Territories of the United States. Upon that subject, I beg leave to read an extract from the diary of John Quincy Adams, then Secretary of State:

"*March* 3, 1820.—When I came this day to my office, I found there a note, requesting me to call at one o'clock at the President's House. It was then one, and I immediately went over. He expected that the two bills, for the admission of Maine and to enable Missouri to make a Constitution, would have been brought to him for his signature: and he had summoned all the members of the Administration, to ask their opinions in writing, to be deposited in the Department of State, upon two questions: 1. Whether Congress had a constitutional right to prohibit slavery in a Territory; and, 2. Whether the eighth section of the Missouri bill (which interdicts slavery forever in the territory north of 36 degrees 30 minutes latitude) was applicable only to the Territorial state, or would extend to it after it should become a State. As to the first question, it was unanimously agreed that Congress have the power to prohibit slavery in the Territories."

I repeat it, sir, the Cabinet of Mr. Monroe were unanimously of opinion that Congress had the power to prohibit slavery in a Territory; and in that Cabinet were William Wirt, William H. Crawford, and John C. Calhoun.

Mr. CHESNUT. I think it is due to the memory of Mr. Calhoun to state what I believe to be known to most Senators, and is according to my recollection, that upon the floor of the Senate, in response to this charge, made by the Senator from Missouri, Mr. Benton, he denied ever having given such an opinion in relation to the Missouri compromise. I state that much, as due to the memory of Mr. Calhoun.

Mr. HAMLIN. If my friend from Wisconsin will allow me a moment, I will state that I recollect very well the denial to which the Senator from South Carolina has alluded. Mr. Calhoun did, upon the floor of the Senate, make that denial; but I also recollect that a Senator of this body at that time, Mr. Dix, of New York, obtained from the State Department what purported to be an abstract from the envelope in which those opinions were enclosed. The opinions themselves were not found.

Mr. PUGH. And never have been.

Mr. HAMLIN. But the envelope was found in the Department.

[See Appendix, Note C.]

[Mr. PUGH (among other things) said: I said the other day, and I have said it many times here and elsewhere, that I was in favor of maintaining the principle of the Missouri compromise up to the time that California formed her State Constitution; not that I believed it to be constitutional, but it having been tried before the adoption of the Constitution, and having been acquiesced in, and being the shortest way to make peace, I was in favor of extending the Missouri-compromise line to the Pacific ocean up to the time that the State of California formed a State Government. That drove me to the other doctrine of non-intervention and popular sovereignty. Therefore it is in vain for the gentleman to cite the Missouri compromise, or any of its corollaries.

Mr. DOOLITTLE. I have discussed simply the question of constitutional power, not of expediency. I ask the honorable Senator whether, in his opinion, he can go for anything which is unconstitutional, if it is expedient?

Mr. PUGH. No, sir.

Mr. DOOLITTLE. I discussed the simple question of the constitutionality of the power of Congress on that subject, not of expediency.

Mr. PUGH. Does the Senator see no difference between a power of universal prohibition

and a power of division? Can he see no difference between an act of Congress that provides that no slaves shall be taken into any Territory, and an act of Congress which divides the Territory equally between the slaveholding and non-slaveholding States? Is it possible that the Senator sees no distinction? If so, I despair of enlightening him.

Mr. DOOLITTLE. Mr. President, I was speaking of the constitutional power of Congress to legislate upon and exclude slavery from the Territories; and if it has the constitutional power te exclude ten slaves, it has the constitutional power to exclude ten thousand, or exclude them all. If it has the power to exclude slavery from half the Territory, it has the power to exclude it from the whole. I was simply arguing the question of constitutional power; and while I admit that, in reference to some of the Southern Territories, Congress did not, in the exercise of its constitutional power, do all that it had a right to do, yet it did exercise a portion of that power by way of limitation even of slavery, in the slaveholding Territories of the South. On the question of power, there is no difference whether we exclude half or exclude the whole, or from half or the whole of the Territory.]

The bill received the signature of President Monroe, who thus, upon his official oath, asserted and exercised the constitutional power of excluding slavery from the Territories.

But let us pass on from 1820, and come down at once to General Jackson's Administration. I understand General Jackson to be good Democratic Republican authority. He certainly was when I belonged to the Democratic Republican party of this country, although many whom I now see upon the other side of the Chamber, standard-bearers of the Democracy of to-day, were not then enrolled within its ranks. I do not refer to my honorable friend from Alabama, [Mr. FITZPATRICK.] In 1836, Wisconsin was organized as a Territory, and this same provision for slavery restriction was reincorporated in the bill for its organization; and, to show how little General Jackson and his Administration thought of this new dogma, that the moment a Territory is organized, Congress has no louger any power over its legislation, I will refer you to some facts which took place during his Administration.

The Territorial Legislature of Florida and the Territorial Legislature of Wisconsin assumed the power to incorporate certain banking institutions. During the Administration of General Jackson, a law was introduced into Congress, and passed both houses and received his signature, repealing those bank charters; and it went further, and declared that no Territorial Legislature should have power to incorporate a bank without the consent of Congress. This shows what he thought of this idea that Territories, from the moment they are organized, become sovereign, and independent of the control of Congress. Such an idea was never dreamed of by the Democratic party in its better days.

But again, sir, Iowa was organized in 1838, during Mr. Van Buren's Administration, and the next year, I believe, there was an act passed to alter and amend the organic acts of Wisconsin and Iowa; and what was that alteration? Up to that time, 1839, the Governor of a Territory always had an absolute veto on every law passed by a Territorial Legislature. The Governor not only had the right to veto it absolutely, but it was made his duty if he approved a bill to submit it to Congress, to be approved or disapproved by Congress before it should take any effect; but in 1839, the Territorial organic acts of Wisconsin and Iowa were amended, and it was provided that the veto power of the Governor should be reduced from an absolute veto to a veto requiring but two-thirds of both branches of the Legislature to pass a bill over it; but in the second section of that act it was expressly provided that

"This act shall not be so construed as to deprive Congress of the right to disapprove of any law passed by the said Legislative Assembly, or *in any way to impair or alter the power of Congress over laws passed by said Assembly.*"

Where was this new dogma of Territorial sovereignty then? Sir, it had never seen the light. No man of standing in the country had ever dreamed of it at that time, unless it be Arthur St. Clair, of whom and of whose fate, I have already spoken. The power of Congress to control the legislation of the Territories was an admitted power, exercised by all Administrations, contended for by all parties in this Government from the beginning down to the period of which I speak. But, sir, I stop not there. Coming down still later, to the Administration of James K. Polk, when Mr. Buchanan was Secretary of State, Oregon was organized, and the same provision was inserted in the organic act of that Territory, by which slavery was prohibited therein forever.

It is true, therefore, as I have stated, that in the history of this Government, from the Administration of Washington to 1847, to the close of Mr. Polk's Administration, every Administration from the beginning has not only asserted, but, upon its official oath and responsibility, it has exercised, the power to legislate for the Territories over their internal concerns—not only upon their local concerns generally, but upon the subject of slavery, and to legislate by way of restriction.

Mr. PUGH. Does the Senator mean to say that that was the opinion of President Polk?

Mr. DOOLITTLE. He signed the bill, and when he signed the bill——

Mr. PUGH. I ask the Senator if he is aware of the fact that Mr. Polk brought to the Capitol a message to vet othe Wilmot proviso, and that it is in existence now? He brought it to the Capitol, and would have vetoed the bill, and the message is in existence.

Mr. DOOLITTLE. The facts, I believe, are these: Mr. Polk, at one time, contemplated vetoing the Oregon bill. He subsequently sent a special message to the Congress of the United States, in which he stated, in substance, that if the Territory of Oregon had reached below 36° 30′, he would have vetoed the bill—not because Congress had not the power, but on the simple ground of expediency, that he was in favor of extending the compromise line of 36° 30′ to the

Pacific ocean. That is the ground on which he placed it.

Mr. PUGH. That is not the fact to which I called the Senator's attention.

Mr. DOOLITTLE. I will ask the Senator, do you say that Mr. Polk, in that message, denied the power of Congress?

Mr. PUGH. He did. I was going to tell the Senator that the message to which I referred, the original, is endorsed in Mr. Polk's handwriting:

"I brought this message, signed, to the Capitol, on the night of the 3d of March, 1849, intending to send it to the House of Representatives if they had persisted in the amendment to the civil and diplomatic appropriation bill"—

Which was the Wilmot proviso; but the House having receded, the message never was sent in. The paper is in existence. Large extracts of it have been published within the last month in the papers.

Mr. DOOLITTLE. I shall be obliged to the honorable gentleman if he will produce the message, and point out the paragraph in it in which Mr. Polk denies the power of Congress to legislate upon the subject of slavery in the Territories.

Mr. PUGH. The first sentence says it. I will get the Senator the message.

Mr. DOOLITTLE. Get it, if you please. The special message which he sent to Congress at the subsequent session, after approving of the Oregon bill, stated, as I understand it, the grounds on which he would have vetoed the Oregon bill if that Territory had extended below 36° 30′, not upon the ground of constitutional power, but upon expediency. If, however, Mr. Polk has written a message declaring that the bill was unconstitutional, and has affixed his signature to a bill which he considered unconstitutional, that does not alter the fact which I stated, that every Administration has asserted, and has exercised upon its official oath and responsibility, the power of legislating on the subject of slavery in the Territories of the United States, from Washington down to the close of Mr. Polk's Administration; although, if the Senator from Ohio is correct, it would place Mr. Polk under a very grave imputation. I think, however, he must be mistaken.

[Mr. PUGH (in the course of the subsequent debate) said: I believe the gentleman claims nothing under Tyler.

Mr. DOOLITTLE (in reply to that) said: It is true I did not refer to Mr. Tyler's Administration when Mr. Calhoun was Secretary of State, but I will refer Senators to it now, to show that Congress went even further than they did in any other Administration. In the Texas joint resolutions of admission, this language will be found:

"New States, of convenient size, and not exceeding four in number, in addition to the said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said territory lying south of 36 degrees 30 minutes north latitude, commonly known as the Missouri-compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri-compromise line, slavery, or involuntary servitude, (except for crimes,) shall be prohibited."

Mr. Tyler and his Administration went so far as to prohibit slavery in the States.]

[Mr. PUGH again, in the course of the subsequent debate upon this point said, among other things:

But, sir, I have heard the Senator talk about what former Presidents and former Congresses have done. He does not open the Constitution of the United States, and show us this power. He says it existed because it has been exercised. Does he argue that way about other subjects? Does he go back to 1793, to the act providing for the reclamation of fugitive slaves, and to its recognition by every department of this Government, and by all the States, and does he say that it is a settled question? Oh, no, that is not settled; it is unsettled; and I have heard the Senator himself get up on this floor and say that he did not understand the Constitution of the United States to vest in Congress any power to provide for the reclamation of fugitives from service.

To which Mr. DOOLITTLE replied: The difference between the honorable Senator and myself is simply this: he can argue words out of the instrument, or words into the instrument, at his pleasure; I cannot do it. The clause of the Constitution in reference to fugitives from service does not say that Congress shall have the power to legislate on that subject at all; it says no such thing. It simply says that a State shall not, by any act of its own, discharge from service a fugitive who may be held to service under the laws of another State; and I tell the gentleman that, as an original question, coming up for discussion, any good lawyer and strict constructionist of the Constitution will say, as I say, that the Constitution of the United States does not, in that clause, give to Congress any power to legislate at all. But in relation to the other clause of the Constitution to which I have referred, it expressly says Congress shall have the power. That is the difference. In the one case it does not say it where the gentleman says it has the power. In the other case, where he denies the power, and I insist that Congress has it, the Constitution says it shall have the power. Now, let us see these clauses. I have heard of a man being able to argue the seal off a bond in a court of justice——

Mr. PUGH. I wish the Senator would read his passage, for I am very anxious to conclude my remarks. I am willing to hear it.

Mr. DOOLITTLE. The clause in relation to fugitives escaping from service is as follows:

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

Now, there is no power given to Congress to legislate on that subject. It does inhibit the power of a State to legislate in a certain way, and any law or any proceeding on the part of a State which has the effect to discharge the fugitive from labor, is unconstitutional and void, by the Constitution of the United States; and every

State court, every State judge, and every judge of the Supreme Court, is bound so to declare it. That is the true construction of this clause. But in relation to the other clause the language is:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

The Supreme Court, in five different decisions, beginning about 1810, and the last one in 1853—just about six months before you passed your Nebraska bill—unanimously decided that this clause of the Constitution gave Congress power to govern and legislate for the Territories. The difference between him and me is this: where I maintain Congress has the power, the Constitution says it shall have the power; he maintains it has the power where the Constitution does not say it. My honorable friend here has the faculty of arguing words in or arguing words out at his pleasure. I have never yet learned to do that.

Mr. DOOLITTLE (in the regular order of debate) said:

And now, sir, let us for a single moment look at the question, aside from all precedent and judicial construction, and see where we stand. What is the language of the Constitution:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

It has sometimes been said that the power which Congress exercises is a power over the territory as property merely. Suppose we take that position, that Congress controls it as mere property; what then may Congress do? What may the owner of property do? He may sell it, or refuse to sell it; he may lease it, or refuse to lease it; he may sell it to a white man, to an Indian, to a negro, or he may refuse to sell it to either; he can lease it to one, or refuse to lease it to another. He can say that the foot of a slave shall never tread upon it. If you concede that Congress can control it as property, you concede the whole ground of power; for Congress would then have power to keep off every Chinaman, every negro, every alien, and could keep off even our own citizens; and Congress does exercise the power of keeping even our own citizens off certain portions of the public domain.

Again, you say that Congress is to treat it as mere property. Well, let us view it in another light. What do the facts show? Look at Wisconsin and Iowa, and then, at Missouri. The public lands of Wisconsin and Iowa have sold, on an average, for almost a dollar an acre; and why? Because they were not cursed with the presence of a negro servile population, and were peopled by freemen, and by them alone. How was it with Missouri? So long as it was understood and generally believed that Missouri was to be a slave State, and to remain a slave State, that population sought its home with reluctance in Missouri; and what has been the effect on your public lands in that State of the presence of slave labor? They scarcely averaged twenty-five cents an acre—land just as good as it is in Wisconsin, just as good as it is in Iowa. Why? Because Slavery existed in Missouri. So, if we are to come down to the mere mercenary consideration of dollars and cents, and discuss this as a question of property, if Congress controls the Territory as mere property, the question whether Slavery should go into Kansas or not, as a mere question of property alone, would make $40,000,000 difference to the people of the United States.

But another says he believes in popular sovereignty, and therefore Congress should have no power to legislate for the Territories. So do I believe; but I will tell you the kind of popular sovereignty that I believe in. The people of the United States, and the States of the Union represented here in Congress, are the popular sovereigns in the Territories, and therefore Congress should have power to legislate for them. The people who purchase the Territories, who pay for the Territories, who, if necessary, fight for the Territories; the people who own them, and expect to settle in them, or send their children there; who pay the expenses of the Legislatures, the judges, and the Governors of the Territories—they are the people who are rightfully sovereign in the Territories of the United States, and not the first band of settlers who happen to go there, whether from one State or from another. It is the people and States of the whole United States represented in Congress who are sovereign there until the Territories are grown up to sovereignty, when the power of Congress over them should cease, and they be admitted into the sisterhood of States.

Again, sir: all must concede that Congress has power to pass an organic act. What is that but a law for the Territory—the fundamental law, controlling all other Territorial laws? It is equally certain that Congress can repeal or amend the organic act. From this consideration alone, Mr. Buchanan was right when he said the "*inference is irresistible, that Congress has the power to legislate*" for the Territories.

But, Mr. President, to return once more to this Dred Scott decision. We are always bound to respect the final decision of any court, so far as the particular case is concerned, for the parties to it are compelled to acquiesce in the decision, where the court have jurisdiction; but as to the political opinions expressed by some of the judges in making that decision, I feel compelled to say, frankly, they do not command my respect. This may be, perhaps, the first time when it is alleged that the precise question has arisen before the Supreme Court of the United States as to the power of Congress to legislate on the subject of slavery in the Territories, but it is by no means the first time the question has arisen before that court as to the general power, or the source of the constitutional power, of Congress over the Territories. That question has been presented to the court in four or five different cases, running through a period of almost fifty years. The first of these cases, that of Sere *vs.* Pitot, arose in 1810, and is reported in 6 Cranch, 336. The Supreme Court of the United States, without any dissenting opinion, and in the most explicit language, then declared:

"The power of governing and legislating for a Territory is the inevitable consequence of the right to acquire and hold

territory. Could this position be contested, the Constitution declares that 'Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;' accordingly, we find Congress possessing and exercising the absolute and undisputed power of governing and legislating for the Territory of Orleans."

Sir, can any court, in stating the power which Congress exercises over the Territories of the United States, use any broader language than when it declares that Congress possesses and exercises the absolute and undisputed right of governing and legislating for a Territory?

Again, in 1828—eighteen years afterwards—Canter's case, which is reported in 1 Peters, 511, came before the Supreme Court, and then the Court declared:

"In the mean time, Florida continues to be a Territory of the United States, governed by that clause of the Constitution which empowers Congress 'to make all needful rules and regulations respecting the territory or other property belonging to the United States.' Perhaps the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the facts that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power may be derived, the possession of it is unquestioned."

That was the language of the Supreme Court, with no dissenting voice. It was not the opinion of a bare majority, where the whole world knows that the court is divided according to its political opinions upon a question presented before it, but the unanimous opinion of the whole court, declaring the power which Congress possesses and exercises over the Territories of the Union. Again, in the case of McCulloch *vs.* Maryland, 4 Wheaton, 316; and again, in 1840, in the case of the United States *vs.* Gratiot, 16 Peters, 537, the court, in delivering its opinion, without a dissenting voice, referred to this clause of the Constitution as the true and undoubted source of the power over the Territories. And what is a remarkable fact, which the country ought to know, in the judicial history of this Government, is, that as late as the December term, 1853, a very few weeks before the introduction of the Nebraska bill, and the proposition to repeal the Missouri compromise, the Supreme Court of the United States, in an opinion delivered by Judge Wayne, with the unanimous approbation of the court, consisting of the same judges that pronounced the Dred Scott opinion, speaking of the Territory of California, said:

"The Territory had been ceded as a conquest, and was to be preserved and governed as such until the sovereignty to which it had passed had legislated for it. That sovereignty was the United States, under the Constitution, by which power had been given to Congress 'to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.'"—*Cross* vs. *Harrison*, 16 *Howard*, 193.

Here we have the unanimous opinion of the Supreme Court on cases arising at five different periods in its history, beginning in 1819, and coming down to 1853, when the judges, by no divided opinions based upon political opinions or otherwise, did as our fathers did, as Washington, Jefferson, Madison, Monroe, and Jackson did, maintain and declare the right of Congress to exercise the undisputed power of legislating for the Territories of the United States.

But let us now see upon what grounds they avoid the effect of these decisions. They now take the ground, among others, that that clause of the Constitution of the United States does not refer to any territory acquired since the Constitution was formed; that it only referred to the territory then belonging to the United States. That is one of the grounds on which they place it; and yet, the case coming up from Florida was in relation to territory acquired afterwards; the case coming up from Orleans was in relation to territory acquired in 1803; and the last, in relation to California, acquired by the Mexican war or treaty of peace—all of it territory acquired since the Constitution took effect. Do not the majority of that court plant themselves upon a very narrow ground, to avoid the effect of its former decisions?

Mr. President, when I am told by gentlemen that I must respect the decision of the Supreme Court, and that my judgment must bow before its opinion, I ask you which opinion? An opinion delivered by a divided court, in the midst of intense excitement, upon a question of all others the ground of political strife, and made in accordance with preconceived political opinions and party associations? Shall I bow my judgment before that opinion, or shall I hold in reverence the opinion of that court pronounced unanimously by its judges, through a period of near forty years, in which they maintain, and declare again and again and again, the unquestionable and unquestioned power of Congress to legislate over the Territories of the United States?

To the gentlemen upon the other side of the Chamber, I would say, in all frankness, I do not doubt your sincerity nor question your integrity when you tell me that the South has changed its ground on this question; but when I concede to you that, you must concede the same to me, and those who act with me on this side of the Chamber. I believe that every Administration of the Government, from the beginning to 1847, has officially asserted and exercised this power. I, also, believe that not only the Supreme Court of every free State, but the Supreme Court of every slave State in this Union, that ever gave an opinion on the question, previous to 1847, has always maintained that slavery rests upon local law, and local law alone; that the Constitution is not a general charter to carry slavery all over the Territories of the Union. No case, I believe, previous to 1847, can be found when the Supreme Court of any State, North or South, has taken the ground that the Constitution of the United States, of its own force, carries the law of slavery into the Territories of the Union. They, and all of them, whenever they have spoken at all, have conceded to Congress the unquestioned and unquestionable power to legislate for the Territories of the Union, and also that slavery rests only upon local law. Now, gentlemen, when you tell us that we must renounce our opinions, when you say to us in substance that the life-long opinions which we have entertained, which our fathers taught us, which your fathers

taught us also, we must now surrender; that we must bow down and worship a political dogma which to-day declares that the Constitution of the United States, of its own force, carries slavery into, or, what is the same thing, guaranties the right to take and hold slaves in, every Territory which we now have, or may hereafter acquire, we tell gentlemen we cannot conscientiously change our opinions; and because you accompany this with the declaration that, if we do not change them, but will maintain and act upon them, and elect a man who believes in them President of the United States, you will break up this Confederacy, we tell you frankly, gentlemen, that does not change our opinion either; it cannot be changed by any such argument as that. Instead of addressing our manhood, it is addressed to the want of it; and we give you to understand distinctly that, on this question, our opinions are still unchanged, and this last argument, if it has any effect, makes them more fixed and determined.

We still believe that freedom is national, that slavery is sectional and local, and rests upon local law alone. We do not believe that, if we should acquire Canada to-morrow, there is any such slave-extending power in the Constitution of the United States as will, of its own force, at once repeal the laws of Canada against slavery, and establish it there, so that a man from Virginia or South Carolina could take his slaves at once into the territory of Canada, and hold them there, beyond the power of Congress, or any other human power, protected by the Federal Constitution. Nor do we believe that it has any such power over the Mexican laws in the Territory of Utah, California, New Mexico, or any other territory we may acquire from Mexico, as, of its own force, to repeal, at once, those laws which abolished slavery there, and re-establish the law of slavery, so that you can take your slaves into them, without any positive law authorizing it, and hold them there by virtue of the Constitution.

If this ground is conceded, where will the people of the North stand? If we concede the ground that the Constitution of the United States, of its own force, would authorize you to carry slaves into Canada if we should purchase it to-morrow, the same Constitution would authorize you to carry it into Wisconsin, and we could not hinder it; and why? Before answering this question, perhaps I ought to say that the Supreme Court, in the opinion which they have delivered, in my humble judgment, on a fair construction of that opinion, have as yet gone no further than to deny to Congress and to the people of the Territory the power to prohibit slavery; but Mr. Buchanan, in the message from which I read the extract, goes altogether beyond the Supreme Court, in my judgment. Mr. Buchanan assumes not only that neither Congress nor any other human power has the power to prohibit its entry, but that the Constitution, under the decision of the Supreme Court, with its own positive force, guaranties the right to carry and hold slaves in the Territories which we now have or may hereafter acquire. He says:

"The right has been established of every citizen to take his property of any kind, including slaves, into the common Territories belonging equally to all the States of the Confederacy, and to have it protected there under the Federal Constitution."

He does not stop with Chief Justice Taney and the judges of the Supreme Court, who deny that Congress or the Territory has the power to legislate, and therefore pronounce the Missouri restriction unconstitutional; but he goes further, and undertakes to make it out that the Constitution of the United States, by its own positive force, guaranties slavery in all the Territories.

But, to return to the question. If it has that effect in a Territory, it has it in a State. The Constitution of the United States was made for States, and not for Territories at all. It only mentions them to give Congress the power to govern them. It is the paramount law of the land, anything in any State Constitution or law to the contrary notwithstanding; and if the Constitution of the United States has the power to repeal the law against slavery in Canada, should we acquire it, and to guaranty the right to take and hold slaves there, it can repeal the Constitution of Wisconsin restricting slavery, and guaranty the right to take and hold slaves there. Does not the Constitution mean the same thing everywhere?—the same in Wisconsin and in Kansas? And do you not recollect, sir, that the very moment the Dred Scott decision was pronounced, the newspaper in Washington which claimed to represent the views of the Administration—I refer to the *Union*—declared that every State law and Constitution of every State in the Union abolishing slavery was, under that decision, against the Constitution of the United States, and therefore void. There is no half way with this doctrine; there is no middle ground; there is no neutrality in it. I tell you, he that is not with us is against us. You understand it, sir. You claim that your doctrine carries slavery into every Territory by force of the Constitution; and it is because you claim this, because you are asserting this aggressive doctrine in favor of slavery, that we are prepared to resist it by our action, to resist it in all lawful and in all honorable ways. We are pledged to do so, and we expect to do so.

Mr. President, the truth is, that a revolution, based upon this novel idea, that slavery is a blessing, has been inaugurated in this country within the last twelve years, is now in progress, and has not been altogether bloodless either. It was this same aggressive idea which led Mr. Atchison in Missouri, in 1853, months before the Nebraska bill ever saw the light, to proclaim to the people of Western Missouri that slavery is a thing of divine right—(the same doctrine which afterwards culminated in the Lecompton Constitution;) that it is above and before all Constitutions; that Constitutions are to protect it, not to abolish it; and, assuming this, it was resolved to force it into the Territory of Kansas at all hazards, "at whatever sacrifice of blood or treasure," to use the language of the resolution of a meeting which he addressed long before the passage of the Kansas-Nebraska act. There is the place where, and

that was the time when, the war was declared on this question. It was to carry out this aggressive policy, to carry the institution of slavery into Territories free from it, made free by the law of Congress itself, that that act was passed. I shall not go over what followed; we are too familiar with that bloody chapter in our history. That aggression, too successful in the beginning, failed in the end. Republicanism, taking the alarm, reorganized itself, in 1856, and, though defeated in the canvass, achieved a victory. By its moral power it made some of the chosen instruments of that aggression stand back aghast, and shrink from the consequences of their own work. The revolutionary leaders were beaten, with the Administration in their hands. Kansas is free.

We now say, I repeat, to our friends from the South, that, while it is your right to change your opinions on this question, when you undertake to force those opinions upon the country for the purpose of compelling the Government of the United States to revolutionize its whole policy, to carry out an aggressive policy for slavery extension everywhere, it is our intention and full purpose to resist this revolution in the Government, and to overcome it—peacefully of course, but we expect to overcome it.

Mr. President, I have detained the Senate longer than I anticipated; but there is contained in those few sentences of the annual message which I have read, that which covers the whole ground; and, if adopted and acquiesced in by the American people—which, in my opinion, it will not be—the Calhoun revolution would be complete; there would be no longer any free Territories; all would be slave Territories; there would no longer be any free States; all would be slave States.

The honorable Senator from Virginia, not now in his seat, [Mr. Mason,] applied to the free States generally a term which I can hardly suffer to pass without notice. He called them "the servile States." I know not in what sense the honorable gentleman intended to apply this term to the State which I represent; but in whatever sense, I shall never apply any term of opprobrium or disrespect to any of the States, and certainly never to the State from which he comes. No, sir; Virginia is a State in whose history and achievements we take pride, and for whose opinions, for whose earlier opinions, we hold the highest respect. Wisconsin, the State which I represent, was born of Virginia; she was born in the day of her pride, and when the true principles of Virginia found place in her history, and were expressed by her living statesmen. Sir, I will employ no opprobrious epithet towards Virginia—never. It is a State in the memory of whose great names we of Wisconsin feel proud. To Virginia we owe a debt of gratitude we can never repay. She has saved us, by her masterly policy in the day of the infancy of the Northwestern Territory, from being cursed by the presence of that institution which, without speaking disrespectfully of her, I may be permitted to say, in my humble opinion, is sucking her very life's blood.

Mr. President, I can speak, too, of the State of New York, for it was my native State. At the beginning of this century, where stood Virginia and New York in comparison with each other? Virginia had double the white population of New York; to-day she has but one million, perhaps, of white population, while New York has more than three millions. New York is now the Empire State; she has taken the place which Virginia once proudly occupied. Virginia has as noble harbors and rivers and waterfalls, a larger territory and better soils, and a milder climate, than New York. But for her heavy misfortune, in the presence of her servile negro population, there is every reason to believe she would to-day have had a white population of at least three millions. What has Virginia got in exchange for two millions of white children? She has half a million of slaves and a quarter of a million of free negroes, perhaps. Do you ask me what is the cause of all this change in her comparative position? What has produced it? Why is it that to-day, if our country were invaded by a foreign foe, even Wisconsin, young as she is, can bring as many troops into the field, and raise as much bread to sustain them, as Virginia herself? Why is it? The answer is too plain. It is the presence of this servile population in Virginia which has produced this change in her comparative relations to her sister States, and in comparison even to her youngest-born, Wisconsin, which I am proud this day to represent. [See Note E.]

APPENDIX.

It will be observed that, in the revision of the above speech, some portions of debate and colloquy are omitted, and the order of the debate within brackets changed, that all said by me upon one subject may appear together.

NOTE A.

Mr. Calhoun, the great leader of this new school, far in advance of his followers, used this language in the Senate in 1838:

"Many in the South once believed that it [slavery] was a moral and political evil; that folly and delusion are gone. We see it now in its true light, and regard it as the most safe and stable basis for free institutions in the world. It is impossible with us that the conflict can take place between labor and capital, which make it so difficult to establish and maintain free institutions in all wealthy and highly-civilized nations where such institutions as ours [slavery] do not exist."—*Appendix Cong. Globe*, 1837–'8, *p.* 62.

Extracts from Mr. Hammond's speech in the Senate, from South Carolina, an eloquent disciple in the school of Mr. Calhoun, March 4, 1858, speaking of a class which he denominated the "mud sill" of society:

"Fortunately for the South, she found a race adapted to that purpose to her hand. * * * We use them for our purpose, and call them slaves. * * * We are old-fashioned at the South yet; it is a word discarded now by 'ears polite.' I will not characterize that class at the North by that term; but you have it; it is there; it is everywhere; it is eternal; * * * in short, your whole hireling class of manual laborers and 'operatives,' as you call them, are essentially slaves. The difference between us is, that our slaves are hired for life, and well compensated; * * * yours are hired by the day, not cared for, and scantily compensated; * * * we do not think that whites should be slaves, either by law or necessity. Our slaves are black, of another and inferior race. * * * Yours are white, of your own race; you are brothers of one blood. They are your equals in natural endowment of intellect, and they feel galled by their degradation. Our slaves do not vote. We give them no political power. Yours do vote, and, *being the majority*, they are the depositaries of all your political power."

The Richmond *Enquirer*, in 1855, then the leading journal of the Democratic party in the South, said:

"At the North, and in Western Europe, by attempting to dispense with a natural and necessary, and hitherto universal, limb, element, or institution of society, you have thrown everything into chaotic confusion. In dispensing with domestic slavery, you have destroyed order, and removed the strongest argument to prove the existence of Deity, the author of that order."

Again—the same journal says, in another number:

"This is but part of our programme; we mean to show up free society—to show that the little experiment made in a corner of Western Europe has signally failed. Then we will invade our North, where a similar experiment is *making*—not *made*. We will point to a thousand premonitory symptoms of ultimate failure, and always adduce the Abolitionists themselves as our witnesses. In fine, we intend, from time to time, to institute a searching comparison between slave society and free society, and to prove that the former is the old, almost universal, normal, and natural, condition of civilized society."

The Lynchburg *Republican*, the leading paper in Central Virginia, in 1854, speaking of the "awful problem presented for solution by the conflict between capital and labor," asks:

"And is there no solution—no harmonizing remedy? * * Woman is inferior to man; God and nature declare the fact; but where the cause of quarrel between the two? The child is inferior to its parents; but no war can grow up between them. In the last cases, the inferiority and subjection have ever been recognised. Not so with capital and labor. They have never ceased to fight for the mastery, and they NEVER will, until their true relations are recognised and acted upon by society. If this were done, their clashing interests would be harmonized and made identical. How and where is this done? We answer, that it is accomplished by slavery, as it exists in the Southern States. * * * Slavery is the corner-stone of our republicanism. * * * Slavery is the great peacemaker between capital and labor."

Mr. Fitzhugh, in a book entitled "Free Society a Failure," commended very extensively by Democratic journals South, says:

"We do not adopt the theory that Ham was the ancestor of the negro race. The Jewish slaves were not negroes, and to confine the justification of slavery to that race, would be to weaken its scriptural authority, and to lose the whole weight of profane authority, for we read of no negro slavery in ancient times. * * * Slavery, black or white, is right and necessary. * * * The slaves are governed far better than the free laborers at the North are governed. Our negroes are not only better off as to physical comfort than free laborers, but their moral condition is better."

How different the opinions of the old Republican party, South as well as North!

NOTE B.

VIRGINIA OPINION IN THE REVOLUTIONARY ERA.

George Washington to Gen. Lafayette.

"I agree with you cordially in your views in regard to negro slavery. I have long considered it a most serious evil, both socially and politically, and I should rejoice in any feasible scheme to rid our States of such a burden. The Congress of 1787 adopted an ordinance which prohibits the existence

of involuntary servitude in our Northwestern Territory forever. *I consider it a wise measure. It met with the approval and assent of nearly every member from the States more immediately interested in slave labor. The prevailing opinion in Virginia is against the spread of slavery in our new Territories*, AND I TRUST WE SHALL HAVE A CONFEDERACY OF FREE STATES."

Same to Robert Morris, 1786.

"I can only say, that there is not a man living who wishes more sincerely than I do to see a plan adopted for the abolition of it, [slavery,] but there is only one proper and effectual mode in which it can be accomplished, and that is by legislative authority; and this, so far as my suffrage will go, shall never be wanting."—*9 Sparks's Washington*, 155.

Mr. Jefferson, in his Notes on Virginia:

"The abolition of domestic slavery is the greatest object of desire in these Colonies, where it was unhappily introduced in their infant state. But previous to the enfranchisement of the slaves, it is necessary to exclude further importations from Africa."—*American Archives, 4th series, vol. I, p.* 696.

Again, Mr. Jefferson, with that wonderful sagacity which seems almost inspired, not only points out the evil, but, in the same sentence, points out the only practical solution of it:

"*Nothing is more certainly written in the book of fate*, THAN THAT THESE PEOPLE ARE TO BE FREE; *nor is it less certain that the two races, equally free, cannot live in the same Government.* Nature, habit, and opinion, have drawn indelible lines of distinction between them. It is still in our power to direct the process of emancipation and deportation peaceably, and in such slow degree as that the evil will wear off insensibly, and their places be, *pari passu, filled up with free white laborers.* If, on the contrary, it is left to force itself on, human nature must shudder at the prospects held up."

Madison, in 1780:

"Congress might, for example, respecting the introduction of slaves into the new States to be formed out of the Western Territory, *make regulations*, such as were beyond their power in relation to the old settled States."

VIRGINIA OPINION, AS EXPRESSED BY MEMBERS OF HER LEGISLATURE AS LATE AS 1832.

Mr. Moore, of Rockbridge, said:

"In the first place, I shall confine my remarks to such of those evils as effect the white population exclusively. And even in that point of view I think that slavery, as it exists among us, may be regarded as the *heaviest* calamity which has ever befallen any portion of the human race."

Mr. Rives, of Campbell, said:

"On the multiplied and desolating evils of slavery, he was not disposed to say much. The curse and deteriorating consequences were within the observation and experience of the members of the House and the people of Virginia, and it did seem to him that there could not be two opinions about it."

Mr. Powell said:

"I can scarcely persuade myself that there is a solitary gentleman in this House who will not readily admit that *slavery is an evil*, and that its removal, if practicable, is a consummation most devoutly to be wished. *I have not heard, nor do I expect to hear, a voice raised in this hall to the contrary.*"

Another Representative from Jefferson and Harper's Ferry, Mr. Henry Berry, said:

"I believe that no cancer on the physical body was ever more certain, steady, and fatal in its progress, than is the cancer on the political body of the State of Virginia. It is eating into her very vitals."

Mr. Thomas Marshall, of Fauquier, in the same section of Virginia, said:

"Wherefore, then, object to slavery? Because it is ruinous to the whites, retards improvement, roots out an industrious population, banishes the yeomanry of the country, deprives the spinner, the weaver, the smith, the shoemaker, the carpenter, of employment and support."

[Mr. Preston of Jefferson, Mr. Summers of Kanawha, Mr. Chandler of Norfolk, Thomas J. Randolph, grandson of Jefferson, Mr. Bolling of Buckingham, urged the same views with great eloquence and power.]

Mr. Brodnax, of Dinwiddie, said:

"That slavery in Virginia is an evil, it would be idle, and more than idle, for any human being to doubt or deny. It is a mildew which has blighted in its course every region it has touched, from the creation of the world."

The Hon. Charles J. Faulkner, who also resides in the vicinity of Harper's Ferry, made a long, eloquent, and radically abolition speech, in which he said:

"Does not the same evil exist? Is it not increasing? Does not every day give it permanency and force? Is it not rising like a heavy and portentous cloud above the horizon, extending its deep and sable volumes athwart the sky, and gathering in its impenetrable folds the active materials of elemental war?"

Mr. James McDowell, of Rockbridge, since Governor of the State, and a distinguished member of Congress, said:

"Sir, you may place the slave where you please, you may dry up to your utmost, the fountains of his feelings, the springs of his thought; you may close upon his mind every avenue to knowledge, and cloud it over with artificial night; you may yoke him to your labor as an ox which liveth only to work, and worketh only to live; you may put him under any process, which, without destroying his value as a slave, will debase and crush him as a rational being; you may do this, and the idea that he was born to be free will survive it all. It is allied to his hope of immortality; it is the ethereal part of his nature, which oppression cannot reach; it is a torch lit up in his soul by the hand of the Deity, and never meant to be extinguished by the hand of man."

In another part of the speech, he gives the following prophetic warning to the South, and which those who now madly talk about dissolving the Union would do well to heed:

"*If gentlemen do not see and feel the evil of slavery while this Federal Union lasts, they will see and feel it when it is gone;* they will see and suffer it then in a magnitude of desolating power, to which 'the pestilence that walketh at noonday' would be a blessing—to which the malaria which is now threatening extinction to the 'Eternal City,' as the proud one of the Pontiffs and Cæsars is called, would be as refreshing and as balmy as the first breath of spring to the chamber of disease. * * * Was it the fear of Nat Turner, and his deluded, drunken handful of fellows, which produced, or could produce, such effects? Was it this that induced distant counties, where the very name of Southampton was strange, to arm and equip for a struggle? No, sir; it was the suspicion eternally attached to the slave himself; the suspicion that a Nat Turner might be in every family; that the same bloody deed could be acted over at any time, and in any place; that the materials for it were spread through the land, and always ready for a like explosion."

NOTE C.

Without raising any question as to the integrity or personal honor of Mr. Calhoun, the facts show, I think, conclusively, that in 1820, as a member of Mr. Monroe's Cabinet, he must have given his opinion in favor of the constitutionality of the Missouri compromise. The denial of Mr. Calhoun was made in 1848, almost thirty years after the event. It is not positive and absolute in its terms, but is based upon a want of recollection. Mr. Dix, of New York, was speaking upon this question, and Mr. Calhoun said:

"If the Senator will give way, it will be, perhaps, better that I make a statement at once respecting this subject, as far as my recollection will serve me. During the whole period of Mr. Monroe's Administration, I remember no occasion on which the members of his Administration gave written opinions. I have an impression, though—not a very distinct one—that on one occasion they were required to give written opinions; but, for some reason not now recollected, the request was not carried into effect."

He subsequently denied it, I am told, in more positive terms.

The facts, however, going to show that Mr. Calhoun favored the Missouri compromise in 1820 are: 1st. An admission made in 1838, by him, in these words:

"He was not a member of Congress when that compromise was made, but it is due to candor to state that his impressions were in its favor; but it is equally due to it to say, that, with his present experience and knowledge of the spirit which then, for the first time, began to disclose itself, he had entirely changed his opinion."—*Appendix Cong. Globe*, 1838, *p.* 79.

2d. Mr. Dix read in the Senate, July 26, 1848, (Appendix Cong. Globe, pp 1178–'9,) from Mr. Monroe's manuscripts, a *fac simile* of a paper endorsed "*Interrogatories, Missouri, March* 4, 1820. *To the Heads of Departments and Attorney General.*"

Questions, (on opposite page.)

"Has Congress a right, under the powers vested in it by the Constitution, to make a *regulation* prohibiting slavery in a Territory?

"Is the 8th section of the act which passed both houses on the 3d instant, for the admission of Missouri into the Union, consistent with the Constitution?"

3d. He also read extracts from the diary of Mr. Adams, of March 4, 5, and 6, 1820, positively stating that the Cabinet were summoned to give their opinions, and that they did give them, *unanimously* in the affirmative, to the first question.

4th. The *fac simile* of a letter in Mr. Monroe's handwriting, supposed to have been written to General Jackson, in which he says:

"I took the opinion in writing of the Administration as to the constitutionality of restraining the Territories, which was explicit in favor of it, and as it was that the 8th section of the act was applicable to Territories only, and not to States when they should be admitted into the Union."

5th. The Index Book of the Department of State, referring to the filing of Cabinet answers.

All these facts together place this matter of history beyond reasonable doubt.

NOTE D.

Extract from Gov. St. Clair's speech (*National Intelligencer*, December 6, 1802) to the Convention of the Northwestern Territory:

"That the people of a Territory should form a Convention and a Constitution needed no act of Congress. To pretend to authorize it was, on their part, an interference with the internal affairs of the country, which they had neither the power nor the right to make. The act is not binding on the people, and is, in truth, a nullity; and could it be brought before that tribunal where acts of Congress can be tried, would be declared a nullity. To all acts of Congress that respect the United States (they can make no other) in their corporate capacity, and which are extended by express words to a Territory, we are bound to yield obedience. *For all internal affairs, we have a complete Legislature of our own, and in them are no more bound by an act of Congress than we would be bound by an edict of the First Consul of France.*"

In his speech, he used other disrespectful language towards Congress, but his main positions are based, as I understand him, upon the principle stated in his speech of Territorial sovereignty.

NOTE E.

The title to the Northwestern Territory was disputed between New York and Virginia, claimed by both, and relinquished by both to the old Confederation. Many believe that New York held the paramount title.

WASHINGTON, D. C.

BUELL & BLANCHARD, PRINTERS.

Stereotyped by Blanchard's Process, Patented February 22, 1859.

C. W. MURRAY, STEREOTYPER.

1860.